

SENATE BILL 3513
By Burchett

AN ACT to amend Tennessee Code Annotated, Title 4,
Chapter 3, Part 50; Title 4, Chapter 3, Part 7; Title
49, Chapter 7; Title 49, Chapter 8 and Title 67,
and to enact the "Visual Content Act of 2006".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Visual Content Act of 2006".

SECTION 2. Tennessee Code Annotated, Title 4, Chapter 3, Part 50, is amended by adding the following language as a new section:

Section 4-3-5007. In addition to any other permits required by law, a producer of a film or movie in Tennessee shall, prior to production, apply for a production permit on a form prescribed by the Tennessee film, entertainment and music commission. The commission shall issue a production permit upon submission of a completed application. No charge shall be made for a permit pursuant to the section. The commission shall forward a copy of any such permit to the local film commission in the area in which such production will be produced.

SECTION 3. Tennessee Code Annotated, Section 67-6-530(a), is amended by deleting the first sentence in its entirety and by substituting instead the following language:

Beginning on and after July 1, 2006, the commissioner shall refund the total amount of sales and use taxes paid by a motion picture production company, of the type referred to in Major Group 78, Industry No. 7812 of the Standard Industrial Classification Manual of 1987, or equivalent grouping under the North American Industry Classification System, unless such motion picture production company has been issued a film investor tax credit pursuant to Section 6 of this act for the same production.

SECTION 4. Tennessee Code Annotated, Section 67-6-102(a)(19), is amended by adding the following language as a new, appropriately designated subdivision (K):

(K) Machinery and equipment used primarily in the production and post-production of theatrical and non-theatrical motion pictures for exhibit or sale. (The term "motion picture" as used in this definition includes similar productions for television or other media using film, video tape or other means.) Machinery and equipment include, but are not limited to:

- (i) HDTV compliant cameras and associated equipment;
- (ii) HDTV compliant motion picture editing equipment;
- (iii) Audio equipment to be compliant with HD/digital television;
- (iv) All new or upgraded equipment and machinery for grip and lighting;
- (v) All new or upgraded equipment for motion picture editing; and
- (vi) All new or upgraded equipment for motion picture audio post or music editing.

SECTION 5. Tennessee Code Annotated, Section 67-4-2009(4)(A), is amended by adding the following new language as a new subdivision:

(iii) Machinery and equipment used primarily in the production and post production of theatrical and non-theatrical motion pictures for exhibit or sale. (The term "motion picture" as used in this definition includes similar productions for television or other media using film, video tape or other means.) Machinery and equipment include, but are not limited to:

- (a) HDTV compliant cameras and associated equipment;
- (b) HDTV compliant motion picture editing equipment;
- (c) Audio equipment to be compliant with HD/digital television;
- (d) All new or upgraded equipment and machinery for grip and lighting;

(e) All new or upgraded equipment for motion picture editing; and

(f) All new or upgraded equipment for motion picture audio post or music editing.

Such credits shall be retroactive to January 1, 2005, for HD equipment purchases only. All other credits shall be applicable effective July 1, 2006.

SECTION 6. Tennessee Code Annotated, Section 67-4-2009, is amended by adding the following language as a new subdivision:

(10)

(A) Beginning on July 1, 2006, there shall be allowed as a credit against the sum total of the taxes imposed by the franchise tax law, compiled in part 21 of this chapter, and by the excise tax law, compiled in this part, a film investor tax credit as provided pursuant to the provisions of this subdivision.

(B) For the purpose of this subdivision, unless the context otherwise requires:

(i) "Commission" means the Tennessee film, entertainment and music commission;

(ii) "Department" means the department of revenue;

(iii) "Minority business" means a business which is solely owned, or at least fifty-one percent (51%) of the assets or outstanding stock of which is owned, by an individual who personally manages and controls daily operations of such business, and who is impeded from normal entry into the economic mainstream because of race, religion, sex or national origin and that such business has annual gross receipts of less than one million dollars (\$1,000,000);

(iv) "Minority participant" means an individual who is impeded from normal entry into the economic mainstream because of race, religion, sex or national origin;

(v) "Production company" means any person that produces a film or movie in Tennessee;

(vi) "State-certified production" means a film or movie which has been certified by the Tennessee film, entertainment and music commission and department of revenue as a production in which:

(a) At least fifty percent (50%) of the principal photography will be performed in Tennessee; and

(b) At least fifty percent (50%) of the total production costs will be expended in Tennessee; and

(vii) "Total certified base investment" means the amount of total investment in Tennessee determined by the department based on the application for a state-certified production filed by a production company with the commission and any other information or documentation deemed necessary by the department.

(C) A production company producing a state-certified production shall be entitled to a film investor tax credit in the following amounts:

(i) Seventeen percent (17%) of the total certified base investment if such base investment is greater than five hundred thousand dollars (\$500,000) per project in any twelve (12) month period;

(ii) Twenty percent (20%) of the total certified base investment if such base investment is greater than five hundred thousand dollars (\$500,000) per project in any twelve (12) month period and, in addition, at least twenty thousand dollars (\$20,000) per project will be expended in Tennessee on music recorded in Tennessee or created by Tennessee residents; or

(iii) Twenty-two percent (22%) of the total certified base investment if such base investment is greater than five hundred thousand dollars (\$500,000) per project in any twelve (12) month period and at least twenty-five percent (25%) of the crew and cast will be Tennessee residents.

(D) A production company seeking a film investor tax credit shall submit an application to the commission on a form prescribed by the department. An applicant shall provide all additional information necessary for a complete review of the application including, but not limited to, a minority business or minority participant plan, accounting records, budgets and other financial materials relating to the proposed production. The commission shall review all materials and make an initial determination as to whether the proposed production qualifies as a state-certified production. If, in the discretion of the commission, such production does qualify as a state-certified production, the commission shall forward the application and all accompanying materials to the department for review. If the department concludes that a production is a state-certified production, the department shall determine the total certified base investment for the production. Based on the total certified base investment and other qualifying factors pursuant to the provisions of this subdivision, the department shall award a film investor tax credit in an amount consistent with the provisions of subdivision (10)(C) to the production company; provided, that as a condition precedent to receiving any credit, a production company shall sign a statement of intent to begin production of such state-certified production within eighteen (18) months of receiving a film investor tax credit for such production.

(E) A film investor tax credit shall be issued upon a certificate in the name of the production company. In accordance with rules and regulations established by the department, a film investor tax credit is assignable and transferable between taxpayers

subject to taxation pursuant to the provisions of this part or part 21 of this chapter; provided, that any such credit shall be used against tax liabilities arising under this part or part 21 of this chapter within five (5) years from the date the credit was issued by the department as evinced by the date of issuance on the face of the certificate. A taxpayer shall present the original certificate when filing a return under this chapter. If the amount of the credit exceeds the taxpayer's liability, any balance of the credit remaining may be claimed against taxes imposed for any succeeding year; provided, that any such balance shall be used within five (5) from the date the credit was originally issued by the department as evinced by the date of issuance on the face of the original certificate.

(F) No refund shall be issued for any unused credit, or unused balance of a credit, issued pursuant to the provisions of this subdivision.

(G) A production company that has been issued a film investor tax credit pursuant to the provisions of this subdivision that fails to begin production of such state-certified production within twenty-four (24) months from the date of issuance of such credit shall be liable to the state for the total amount of any credit issued for which the certificate is not returned to the department plus interest from the date of issuance. The department shall establish other procedures to ensure commitments made pursuant to this subdivision are fulfilled including, but not limited to, civil penalties.

SECTION 7. The board of regents shall develop a technical film making course of study to be implemented at at least one (1) community college in each grand division of the state. In developing such program, the board shall consult with Tennessee film, entertainment and music commission and industry representatives to determine the best objectives and curriculum for such program. It is the intent of the general assembly that a course in such aspect of film making is offered at at least one (1) community college during fall semester 2006, at at least two

(2) community colleges during spring semester 2007 and at at least three (3) community colleges during fall semester 2007.

SECTION 8. The commissioner of the department of economic and community development shall study the potential economic impact of recruiting, and the potential relocation of, video game industry companies to Tennessee. Such study shall be conducted in consultation with the Tennessee film, entertainment and music commission. Any recommendations shall be reported to the chairs of the house and senate finance, ways and means committees prior to February 14, 2007.

SECTION 9.

(a) The department of revenue is authorized to promulgate rules and regulations as the department of revenue may deem necessary to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) Notwithstanding the provisions of §§4-5-208 and 4-5-209 or any other provision of law to the contrary, the department of revenue is authorized to promulgate public necessity rules and emergency rules to implement the provisions of this act.

SECTION 10. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 11. This act shall take effect upon becoming a law, the public welfare requiring it.